THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 10224 of 1997

17-10-2005

Between:

1. M/s.Narsing Wines FL-25 Rep.by its Proprietor S.Nageswara Rao Gundlapalle. Nalgonda District and others.

..... PETITIONERS

AND

1 The Prohibition & Excise Superintendent Nalgonda District and another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 10224 of 1997

O R D E R:

This writ petition is filed questioning the demand for payment of the difference in licence fee from the petitioners, who are the FL-24 licence holders, issued under the provisions of A.P.Excise Act (for short 'the Act') and the A.P. Foreign liquor and Indian Liquor Rules 1970 (for short 'the Rules') on the ground that the population in the villages for which they had obtained licences had increased during the periods

mentioned in the impugned notice.

2. The main contention of the learned counsel for the petitioners is that since the census for the relevant period do not disclose increase in population of the villages in which the petitioners were issued FL-24 licence, respondents issuing the impugned notice demanding differential amount, assuming that the population of the villages is more than 10,000, is arbitrary and is unsustainable. It is also the contention of the learned counsel that 'village' means the 'revenue village' and the fact that some villages are merged and are made Yadagirigutta urban panchayat can have no relevance for deciding the population of the villages to which petitioners were issued the licences.

3 . The contention of the learned Government Pleader for Excise is that since demand for differential amount is held valid by several judgments of this Court and since the population of the area in which the petitioners are issued licences is more than 10,000 as disclosed from the relevant census report, there are no grounds to interfere with the impugned notice. He placed strong reliance on **M/s.Swagath, Miryalaguda Vs. Excise Superintendent, Nalgonda District** () **P.Narasimha Rao Vs. Government of Andhra Pradesh, Depart of Revenue (Excise) and others ()** and unreported Judgment of a Division Bench of this Court in W.A.No.1610 of 2003 and batch dated 27-03-2003 **Tirumala Balaji Wines and others Vs. Commissioner of Prohibition and Excise, Hyderabad and another** () and **The Commissioner of Prohibition & Excise Vs. M/s.Mayuri Wines** () in support of the contention raised by him.

4. On my direction, the learned Government Pleader produced the census report for the relevant period. He also produced a certificate of the Sarpanch of Gram Panchayat Yadagirigutta certifying that Yadagiri urban area was formed in 1981 and that Yadagiripalli and Gundlapalli come under the Yadagirigutta area, and that Yadagiri urban contains 15 blocks and that blocks 1 to 3 come under Gundlapalli, and blocks 4 to 9 come under Gattukinda area, Gundlapalli Blocks 10 and 11 come under Guttapaina i.e. Devasthanam Area (Yadagiripalle), Block 12 Gandhinagar Gattukinda Bhagam (Yadagiripalle) Blocks 13 to 15 come under Yadagiripalli. The certificate issued by the MRO dated 29-10-1993 addressed to the District Excise Officer, Nalgonda, in reply to his querry relating to the population of the areas, produced by the learned Assistant Government Pleaders shows that total population as per the common census taken for both the villages of Gundlapalli and

Yadagiripalli is 11,049.

5. Petitioners are FL 24 licence holders of Yadagiripalli and Gundlapalli villages, which admittedly are two different villages and in fact licences were issued to them as if they are two different villages. The demand for differential amount from them relates to the years 1992-93 and 1993-94. In Mayuri Wines case (4 supra) relied on by the learned Government Pleader, a Division Bench of this Court held that 'village' used in the schedule appended to the Rules has to be understood as 'a revenue village'.

6. Since in Swagath case (1 supra) and in P.Narasimharao case (2 supra) it is held that the licencees who gave an undertaking to pay the differential amount are liable to pay the differential amount of future years, the right of the respondents to collect the differential amounts, depending on the population as per census cannot be disputed. But the question to be decided in this case is whether petitioners can be made liable to pay the differential amount on the basis of the population of Yadagirigutta urban area, when they were issued licence for two different villages as revenue villages of Yadagiripalli and Gundlapalli.

7. In Tirumala Balaji Wines case (3 supra) and in W.A.No.1610 of 2003 and batch relied on by the learned Assistant Government Pleader it is held that when a revenue village is divided and reconstituted into six separate revenue villages, such reconstitution takes effect from the subsequent year on the date of notification and that the Commissioner is bound to fix the licence fee taking into consideration the population as per the latest census ignoring any subsequent deduction of the population of the village.

8. Since the population of Gundlapalli and Yadagiripalli together is 11,049, and since the certificate produced by the learned Assistant Government Pleader clearly shows that no separate census was taken for the two villages, and since the Rules do not contemplate the division of the figures mentioned in the census report, respondents by taking into consideration the joint census of the population of Yadagiripalli and Gundlapalli villages cannot claim the differential amount from the petitioners, because the provisions of the Act and the Rules do not contemplate dissection of figures mentioned in the census and since it is well settled rule of interpretation of statues that fiscal enactments have to be strictly construed and the benefit, if any, should go to the subject, but not to the state, and so I hold that the

demand made by the respondents from the petitioners is improper and is liable to be quashed.

9. Accordingly, rule nisi is made absolute and the petition is allowed with costs.

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17-10-2005

Mjl/*